

# **DRAFT FOR CONGRESSIONAL SUBMITTAL**

## **ST. MARY FACILITIES ACT OF 2004**

An Act to direct the Secretary of the Interior to enter into agreements for studies relating to the St. Mary Facilities in Montana and other purposes.

### **SECTION 1. SHORT TITLE**

This Act may be cited as the “St. Mary Facilities Act of 2004.”

### **SECTION 2. PURPOSES**

(a). The Purposes of this Act are:

1. to prepare the studies necessary to rehabilitate or replace the aging St. Mary Facilities in Northwestern Montana to provide for the continued diversion of water from the St. Mary River, subject to the Boundary Waters Treaty Act of 1909, 36 Stat. 2448, to the Milk River;
2. to prepare for the rehabilitation or replacement of the St. Mary Facilities prior to a catastrophic failure of this major diversion that is a cornerstone to the water supply and economy of north-central Montana;
3. to prepare studies to evaluate funding options for the rehabilitation or replacement of the St. Mary Facilities;
4. to prepare studies to address environmental concerns on the Blackfeet Reservation related to the St. Mary Facilities, and the current status and future needs of the Blackfeet Irrigation Project; and
5. to prepare studies of water availability options that may improve the efficiency and enhance the operation of a rehabilitated or replaced St. Mary Facilities, including increasing the storage capacity in Fresno Reservoir.

### **SECTION 3. DEFINITIONS**

(a) As used in this Act:

1. **BLACKFEET TRIBE.** – The term “Blackfeet Tribe” means the Blackfeet Tribe of the Blackfeet Reservation, Montana.
2. **EMERGENCY.** -- The term “emergency” means the movement of a structure within the St. Mary Facilities from a Category 2 status to a Category 1 status and such other changes in the St. Mary Facilities as determined by the Secretary.
3. **MILK RIVER PROJECT.** -- The term “Milk River Project” means the Bureau of Reclamation Project commencing at Lake Sherburne Dam and providing water through a point approximately six miles east of Nashua, Montana, including but not limited to Nelson and Fresno Storage Dams; Dodson, Vandalia, St. Mary, Paradise, Lohman and

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Swift Current Diversion Dams; and Dodson and Harlem Pumping Plants.

4. MILK RIVER PROJECT WATER CONTRACTS. -- The term "Milk River Project Water Contracts" means contracts with the United States Bureau of Reclamation to receive water from the Milk River Project.
5. ST. MARY FACILITIES. -- The term "St. Mary Facilities" means a component of the Milk River Project, authorized in 1905 and located on the Blackfeet Reservation, commencing with diverting water from the St. Mary River into the North Fork Milk River.
6. SECRETARY. -- The term "Secretary" means the Secretary of the Interior.
7. STATE. -- The term "State" means the State of Montana.

### **SECTION 4. COOPERATIVE AGREEMENT WITH THE STATE OF MONTANA**

(a) The Secretary is authorized and directed to enter into a cooperative agreement with the State for the State to prepare studies for the rehabilitation or replacement of St. Mary Facilities in Montana and other water availability needs. The studies shall -

1. identify, evaluate, and estimate the cost and engineering alternatives for the St. Mary Facilities or the modification of existing structures to meet identified water needs;
2. evaluate the payment capability and determine the ability to pay of holders of Milk River Project Water Contracts;
3. identify and evaluate the economic benefits of the St. Mary Facilities by conducting a benefit analysis addressing the appropriate distribution of both capital and operation and maintenance costs. This analysis shall also include recreational benefits derived from recreational use at Fresno Reservoir and economic benefits associated with the restoration of fish and wildlife habitat;
4. on the recommendation of the Secretary or the State of Montana, identify, evaluate, and estimate the cost and engineering alternatives to increase storage in Fresno Reservoir to enhance water availability;
5. document the cultural, historic, and natural resources of the St. Mary Facilities area and develop an appropriate National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) compliance document(s) that would lead to the selection of a preferred alternative for the purposes of these studies; and
6. perform such other studies as may be necessary in furtherance of the purposes of this Act.

(b) The studies authorized by section 4 of this Act shall be performed under the guidelines set forth in a cooperative agreement between the Secretary and the State. The cooperative agreement shall provide for consultation with stakeholders. The State, in

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its sole discretion, may assign its responsibilities under this cooperative agreement to a governmental entity, formed pursuant to the laws of the State of Montana.

(c) The State of Montana, or its designee, is authorized to employ the services and expertise of private consultants employed under contract with the State to conduct and administer the studies authorized in this section.

(d) Subject to studies herein provided, the Secretary shall complete all actions as may be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S. C. 1531 et seq.), and all other applicable laws.

(e) Activities on behalf of the Secretary leading up to and in furtherance of the purposes of this Act shall be on a nonreimbursable basis to the extent costs exceed funding herein provided.

### **SECTION 5. AGREEMENT WITH THE BLACKFEET TRIBE**

(a) The Secretary is authorized to enter into an agreement with the Blackfeet Tribe to prepare studies to address environmental concerns relating to the St. Mary Facilities on the Blackfeet Reservation including but not limited to, the endangered bull trout, erosion and sedimentation in lower St. Mary Lake, erosion and flooding at the confluence of Boulder and Swiftcurrent Creeks, low flow outlet in Lake Sherburne Dam, and low water flows in Swift Current Creek. The agreement shall provide for consultation with stakeholders.

(b) The Secretary is authorized to enter into an agreement with the Blackfeet Tribe to conduct a study to assess the current status and future needs of the Blackfeet Irrigation Project located on the Blackfeet Reservation and associated costs. Nothing in this section shall be construed to authorize any option or action studied pursuant to this subsection.

### **SECTION 6. APPROPRIATION**

(a) There is hereby authorized to be appropriated on a nonreimbursable basis the sum of \$3,000,000 to carry out section 4 of this Act.

(b) There is hereby authorized on a nonreimbursable basis the sum of \$1,000,000 to carry out section 5(a) of this Act and for the Blackfeet Tribe's participation in section 4 studies. There is further authorized on a nonreimbursable basis the sum of \$500,000 to carry out section 5(b) of this Act.

(c) Activities performed by the State towards fulfillment of the purposes of this Act shall be considered as in-kind contribution. For expenditures made by the State

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for private consultants for the studies authorized in section 4 in advance of appropriations under this Act, the Secretary shall reimburse the State with interest.

(d) The amount of funds used by the Secretary under section 4 and 5 may not exceed eight percent of the funds appropriated.

(e) There is authorized on a nonreimbursable basis up to \$5,000,000 as necessary for the Secretary to complete emergency repairs on the St. Mary Facilities during the preparation of the studies herein authorized. Amounts expended by the Secretary for emergency repairs shall be considered in cost-share of the rehabilitation or replacement of the St. Mary Facilities.

(f) Appropriations authorized under this Act are available without fiscal year limitations until expended.

### **SECTION 7. LIMITATION**

(a) No activity carried out under this Act shall be considered a supplemental or additional benefit under Federal reclamation law (the Act of June 17, 1902, 32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

### **SECTION 8. WATER RIGHTS.**

(a) Nothing in this Act shall be construed to create or alter, by implication or otherwise, any reserved water right or other right to the use of water.